

ORIGINAL

FILED
DISTRICT COURT OF GUAM

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Clerk of Court

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM**

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JUAN C. TENORIO and
CHARLENE F. TENORIO,

Defendants.

CRIMINAL CASE NO. 07-00078

**UNITED STATES' CALCULATION
OF EXCLUDABLE PERIODS
UNDER THE SPEEDY TRIAL ACT**

Under the Speedy Trial Act ("STA"), a defendant's trial must begin no later than 70 days from the filing date of the indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.

18 U.S.C. § 3161(c)(1). Section 3161(h)(1) of Title 18 of the STA provides a non-exhaustive list of proceedings occasioning periods of excludable delay. United States v. Lewis, 980 F.2d 555, 564 (9th Cir. 1992)(time periods listed in § 3161(h)(1)(A)-(J) are illustrative and not intended to be exhaustive). The STA excludes certain periods of delay including "other proceedings" involving the defendant and delays resulting from pretrial motions, from the filing of the motion through the conclusion of the hearing or other prompt disposition of such motion. 18 U.S.C. §§ 3161(h)(1), and (h)(1)(F).

The day a party files a motion, the period in which the motion was pending, and the day the motion was resolved are excludable periods under the STA. United States v. Daychild, 357

1 F.3d 1082, 1093-94 (9th Cir. 2004). Section 3161(h)(1)(F) also excludes time after a hearing on a
2 motion where the district court awaits additional filings from the parties that are needed for
3 proper disposition of a motion, and such delays need not be limited to reasonably necessary
4 delays. Henderson v. United States, 476 U.S. 321 (1986). Further, a pretrial motion filed by one
5 defendant affects all defendants. 18 U.S.C. § 3161(h)(7); United States v. Wirsing, 867 F.2d
6 1227, 1230 (9th Cir. 1989).

7 The following periods are excludable from the STA calculation unless otherwise noted:

8	<u>Date</u>	<u>Proceeding or Motion</u>	<u>Effect on STA</u>
9	a. August 22, 2007	Arraignment of both	Day 1 of STA clock
10		Defendants (Doc. 14)	18 U.S.C. § 3161(c)(1)
11	b. August 22, 2007 to September 19, 2007	Nonexcludable time	Day 29 of STA clock
12	c. September 20, 2007 to <u>pending</u>	Motion to Dismiss Count 1 of indictment by Defendant J. Tenorio (Doc. 22) tolls clock even if rendered moot	Excludable period 18 U.S.C. § 3161(h)(1)(F) <u>Wirsing</u> , 867 F.2d at 1231
13			
14			
15	d. September 24, 2007 to <u>pending</u>	Motion for Fed.R.Crim.P. 44(c) Inquiry about Propriety of Joint Representation as to both Defendants by USA (Doc. 26)	Excludable period 18 U.S.C. § 3161(h)(1)(F)
16			
17			
18	e. October 10 - 19, 2007	Motion for Use of Court's Equipment as to both Defendants by USA and Order granting motion (Doc. 42 and 56)	Excludable period 18 U.S.C. § 3161(h)(1)(F)
19			
20			

21 Some of the above-referenced motions remain unresolved.

22 RESPECTFULLY SUBMITTED this 26th day of October, 2007.

23 LEONARDO M. RAPADAS
24 United States Attorney
Districts of Guam and the CNMI

25 By:

26 MARIVIC P. DAVID
27 Assistant U.S. Attorney